

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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SPRINT NEXTEL CORPORATION, *et al.*,

Plaintiff,

vs.

ACE WHOLESALE, INC., *et al.*,

Defendants.

Case No. 2:14-cv-2119-RFB-VCF

**REPORT & RECOMMENDATION**

ORDER TO SHOW CAUSE (DOC. #20)

This matter involves Sprint Nextel Corporation's trademark infringement action against Ace Wholesale, Inc., among others. The court held a show cause hearing on July 2, 2015. Before the court is the court's Order to Show Cause (#20). For the reasons stated below, the court should hold third parties in civil contempt.

**I. BACKGROUND**

On August 21, 2012, Sprint Nextel Corporation (hereafter "Sprint") commenced this action in the Northern District of Georgia against Ace Wholesale, Inc., Jason Floarea, Eric Mandreger, Dominick Lanore, Tony Archie, Jose Genel, Barney Gunn, CopaTrade, Inc., and Moshe Alezra. Sprint alleges that Defendants engaged in an illegal scheme to traffic and "unlock" iPhone 4 and iPhone 4S cellular phones.

In September 2014, Sprint had issued, and served, subpoenas from the Northern District of Georgia. It ordered third-parties: Digitek Telecom, Rampal Cellular Stockmarket (RCS), Sol Mobiles Pvt. Ltd., World Mobile Co., Ali Sadaqa Trading LLC, J2 International Ltd., and New Way International Ltd., (1) to produce documents and (2) appear for depositions in Las Vegas, Nevada. (Doc. #12).

None of the subpoenaed third parties produced documents or appeared at their noticed depositions. (Doc. #11-1 at 6). Sprint then brought a motion to compel against the seven subpoenaed third parties.

1 (Doc. #11). The court granted in part and denied in part Sprint's motion to compel. (Doc. #20). The  
2 court also set a show cause hearing for July 2, 2015. The subpoenaed third parties were ordered to appear  
3 at the show cause hearing and bring with them documents responsive to Sprint's discovery requests. (Doc.  
4 #20).

5 On July 2, 2015, Sprint appeared at the show cause hearing. None of the subpoenaed third parties  
6 appeared at the July 2 show cause hearing. At the show cause hearing, Sprint informed the court that: (1)  
7 Sprint was in contact with Rampal Cellular, (2) Rampal Cellular had produced document that purported  
8 to be responsive to Sprint's discovery requests, and (3) Rampal Cellular was willing to discuss further  
9 production of documents. Sprint had not received documents or had contact with any other subpoenaed  
10 third party. Sprint requested that all subpoenaed third parties, except Rampal Cellular be held in civil  
11 contempt. Sprint also requested that it be able to hold Rampal Cellular in civil contempt, at a later date,  
12 if Rampal Cellular failed to produce other requested discovery. This report and recommendation follows.  
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## 14 II. LEGAL STANDARD

15 Federal Rule of Civil Procedure 37 states that if a party fails to obey an order to provide or permit  
16 discovery, the court may treat "as contempt of court the failure to obey any order." FED. R. CIV. P.  
17 37(b)(2)(A)(vii). Civil contempt is designed to compel a party's obedience to a specific and definite court  
18 order after that party failed to take all reasonable steps to comply. *GoVideo, Inc. v. Motion Picture Ass'n*  
19 *of Am.*, 10 F.3d 693, 695 (9th Cir. 1993).

20 A magistrate judge's civil-contempt power is governed by 28 U.S.C. § 636(e). *Aldridge v. Young*,  
21 782 F. Supp. 1457, 1458 (D. Nev. 1991). It states that where

22 the act constitutes a civil contempt, the magistrate judge shall forthwith certify the facts to  
23 a district judge and may serve or cause to be served, upon any person whose behavior is  
24 brought into question under this paragraph, an order requiring such person to appear before  
25 a district judge upon a day certain to show cause why that person should not be adjudged  
in contempt by reason of the facts so certified.

1 28 U.S.C. § 636(e)(6)(B)(iii) (2013). The assigned district judge then hears the evidence to determine  
 2 whether the conduct warrants punishment. The district judge may impose contempt sanctions in the same  
 3 manner and to the same extent as for a contempt committed before the district judge himself.  
 4 *See id.*; *see also In re Kitterman*, 696 F. Supp. 1366, 1370 (D. Nev. 1988).

5 “A court has wide latitude in determining whether there has been contemptuous defiance of its  
 6 order.” *Gifford v. Heckler*, 741 F.2d 263, 266 (9th Cir. 1984). The movant bears the burden of showing  
 7 by clear and convincing evidence that the nonmoving party violated a specific and definite order of the  
 8 court. *Fed. Trade Comm’n v. Enforma Nat. Prods., Inc.*, 362 F.3d 1204, 1211 (9th Cir. 2004). If the  
 9 moving party satisfies its burden of production, the burden then shifts to the nonmoving party to  
 10 demonstrate why compliance could not be achieved. *Id.*

12 While contempt “need not be willful,” a party should not be held in contempt if their actions  
 13 “appear to be based on good faith and a reasonable interpretation of the court’s order.” *In re Dual-Deck*  
 14 *Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993). A finding of contempt is not  
 15 appropriate where the contemnors have taken “all reasonable steps” to comply with the court’s order.  
 16 *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1479 (9th Cir. 1992).

### 17 **III. DISCUSSION**

18 Subpoenaed third-parties: (1) Digitek Telecom, (2) Sol Mobiles Pvt. Ltd., (3) World Mobile Co.,  
 19 (4) Ali Sadaqa Trading LLC, (5) J2 International Ltd., and (6) New Way International Ltd. (hereafter “the  
 20 non-responsive third parties”) should be held in civil contempt under Rule 37(b)(2)(A)(vii) because they  
 21 failed to obey two orders. In light of Rampal Cellular’s cooperation with Sprint, Rampal Cellular should  
 22 not be held in civil contempt, at this time.  
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1 First, the non-responsive third parties failed to obey the Northern District of Georgia's subpoenas  
2 and failed to appear for a deposition with responsive documents. Second, on July 2, 2015, the non-  
3 responsive third parties failed to: (1) appear for the show cause hearing, (2) produce responsive documents  
4 and (3) show cause why it failed to comply with Sprint's subpoena.

5 The non-responsive third parties' non-compliance with subpoenas combined with their failure to  
6 show cause why they did not comply with the subpoenas constitutes contempt-worthy conduct. *See* FED.  
7 R. Civ. P. 45(e) ("The court for the district where compliance is required . . . may hold in contempt a person  
8 who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.");  
9 *see also Forsythe v. Brown*, 281 F.R.D. 577, 587 (D. Nev. 2012) (citing *Stone v. City of San Francisco*,  
10 968 F.2d 850, 856 (9th Cir.1992), *cert. denied*, 506 U.S. 1081 (1993)) (recommending that a nonparty be  
11 held in contempt for failing to comply with a subpoena).

12 ACCORDINGLY, and for good cause shown,  
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14 IT IS HEREBY RECOMMENDED that: (1) Digitek Telecom, (2) Sol Mobiles Pvt. Ltd., (3) World  
15 Mobile Co., (4) Ali Sadaqa Trading LLC, (5) J2 International Ltd., and (6) New Way International Ltd.  
16 be held in CIVIL CONTEMPT.

17 IT IS FURTHER RECOMMENDED that: (1) Digitek Telecom, (2) Sol Mobiles Pvt. Ltd., (3)  
18 World Mobile Co., (4) Ali Sadaqa Trading LLC, (5) J2 International Ltd., and (6) New Way International  
19 Ltd. pay Sprint's reasonable attorney's fees and costs in an amount to be determined by the Honorable  
20 Richard F. Boulware, U.S. District Judge, by a date to be determined.

21 IT IS FURTHER RECOMMENDED that Rampal Cellular Stockmarket (RCS) not be held in civil  
22 contempt at this time.

23 IT IS ORDERED that the Clerk of Court serve this Report & Recommendation on the following  
24 third parties by U.S. Mail:  
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1 Digitek Telecom  
2 811 Houston Centre  
3 63 Mody Road, TST East  
4 Kowloon, Hong Kong

Rampal Cellular Stockmarket (RCS)  
168 Jabotinsky Road  
51361 Israel

4 Sol Mobiles Pvt. Ltd.  
5 A 204, Kol Dongi CHS  
6 Darsiwada, Sahar Road  
7 Andheri, Mumbai, India 480099

World Mobile Co.  
RM2, 11 F Fiu Fung Mansion  
18 Austin Avenue, TST  
Hong Kong

7 Ali Sadaqa Trading LLC  
8 Office No 1409, HDS Touers  
9 Jumeirah Lakes Towers  
Dubai – UAE

J2 International Ltd.  
Flat 703  
7/F Harbour Centre Tower 1  
No. 1 Hok Cheung Street  
Hung How, Hong Kong

11 New Way International Ltd.  
12 New Way International Road  
13 Britania House, Pier Road  
Feltamy, TW140TW

14 **NOTICE**


15 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and  
16 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk  
17 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal  
18 may determine that an appeal has been waived due to the failure to file objections within the specified  
19 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections  
20 within the specified time and (2) failure to properly address and brief the objectionable issues waives the  
21 right to appeal the District Court's order and/or appeal factual issues from the order of the District Court.  
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1 *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452,  
2 454 (9th Cir. 1983).

3 DATED this 9th day of March, 2016.

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6 CAM FERENBACH  
7 UNITED STATES MAGISTRATE JUDGE  
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